In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 584

CAMELLIA APARTMENTS, INC., ET AL., *Petitioners*

v.

THE UNITED STATES

On Petition for a Writ of Certiorari to the United States Court of Claims

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners are three corporations which own and operate multi-family rental housing developments in the State of Georgia. Each was constructed pursuant to the War Housing Insurance Program and was financed by mortgages insured by the Federal Housing Administration under Section 608 of the National Housing Act, 12 U.S.C. 1743. In applying for and securing mortgage insurance under that provision, petitioners expressly accepted liability for "the adjusted premium charge referred to in Section 2, Article III of the applicable regulations for Section 608." Those

regulations in substance provide for the assessment of a prepayment premium or one percent of the original face amount of the mortgage, in the event that an insured mortgage is paid in full prior to maturity. 24 C.F.R. 282.4 (1949 ed.), Pet. 3-5.

After several years petitioners obtained commitments for conventional refinancing of their multifamily developments. Before the Commissioner of the Federal Housing Administration approved the release of petitioners from their insured mortgages he required that they comply with the premium adjustment provision which had been incorporated into their contracts of insurance. Petitioner University Apartments, Inc. objected to the assessment of that premium adjustment and applied for a waiver pursuant to 24 C.F.R. 282.4. After the Commissioner refused that request,[1] University paid the one percent prepayment premium. Petitioners Camellia Apartments, Inc., and the W & W Company paid the charge without requesting a waiver.

Notwithstanding their voluntary assumption of liability for the adjusted premium charge in the event that their mortgages were paid in full prior to maturity, petitioners instituted this action challenging the statutory authority of the Commissioner of the Federal Housing Administration to assess premium adjustment charges and, assuming such authorization, the validity of the exactions in their particular cases. The Court of Claims carefully considered and properly rejected each of petitioners' attacks.

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[1] In an action instituted on December 20, 1961, in the district court for the District of Columbia, University sought, in effect, to mandamus the Commissioner to grant a waiver. On June 1, 1962, the court dismissed the complaint on the merits.

1. The Commissioner plainly has statutory authority to impose a premium adjustment charge in instances where a mortgage insured under the War Housing Insurance provisions of the National Housing Act is liquidated in full prior to its date of maturity. The authorization to fix such a charge is explicitly set forth in Section 603(c) of the Act (12 U.S.C. 1738):

> * * * In the event that the principal obligation of any mortgage accepted for insurance under this title is paid in full prior to the maturity date, the Commissioner is further authorized in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Commissioner determines to be equitable * * *.

While recognizing the Commissioner's authority to impose prepayment charges, petitioners contend that that authority does not extend to mortgages insured under Section 608 of the Act which, they point out, does not specifically incorporate Section 603 (Pet. 7-8). But the language of Section 603 plainly makes it applicable to any mortgage accepted for insurance under the War Housing Insurance subchapter, and petitioners' mortgages, which were insured under Section 608, concededly are within this category.

2. Congress authorized the Commissioner "to make such rules and regulations as may be necessary to carry out the provisions of this title." 12 U.S.C. 1742. Petitioners attack the Commissioner's regulations imposing a prepayment premium of one percent of the face amount of the mortgage on the ground that this charge exceeds what is necessary to defray the actual expenses incurred by the insurance fund in processing and administering each particular mortgage and is

therefore not "equitable" within the meaning of Section 603(c) of the statute. As the court below observed, to construe so rigidly the operative Congressional mandate would seriously frustrate the Federal Housing Administration's ability to operate in a sound business fashion. Moreover, Congress plainly intended the Commissioner to exercise the broadest possible discretion in arriving at the prepayment charge he would require as a term of the guarantee contract. The only statutory limitation is that the adjusted premium charge not exceed "the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage had continued to be insured under this section until such maturity date." 12 U.S.C. 1738(c). The Commissioner was, of course, intended to demand this contract term on a uniform basis. To insist, as petitioners do, that the adjusted premium charge must be determined *ad hoc* in each case would not only be unworkable; it would also be highly inequitable.[2]

3. Equally without substance is petitioners' contention that they should have been afforded the benefit of a provision of the regulations (24 C.F.R. 282.4(c)(2) (1949 ed.), Pet. 4) which allows prepayment, without charge, of not more than 15% of the original face amount of the mortgage in any one calender year. Petitioners argue that, since a mortgagor can fully discharge his mortgage obligation by annual prepayments of 15% of its face amount over 6 2/3 years without incurring a prepayment charge, they should

[2] Petitioners' argument that the Commission violated the Administrative Procedure Act (Pet. 14-15) falls with its premise that the statute requires determination of the prepayment premium in each individual case.

be allowed to prepay the full amount in one year and have it treated as if it were repaid over the last 6 2/3 years. Their argument is fully answered by the language of the regulation. As the court below observed, the regulation "by its terms, applies only to 'partial prepayments' of not more than 15 percent of the mortgage principal made *'in any one calendar year.'* [Emphasis added.] Since [petitioner] paid more than the maximum permissible amount in one such year, they do not come within the terms of this exception." (Pet. 8a).[3]

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

DECEMBER 1964.

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[3] The exception for partial prepayments reflects in part the benefit resulting to the government. Partial prepayments improve the quality of the Administration's holdings; they reduce the Administration's risk by increasing the mortgagor's equity. A complete prepayment in a single year eliminates the loan, and its premiums, entirely; it in no way improves the overall quality of the loans guaranteed by the Administration.

☆ U. S. GOVERNMENT PRINTING OFFICE 1964—756-647/P.O. 438